



MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen
Chair

Kenita V. Barrow
Vice Chair

April 4, 2018

Waiver 18-03-007

Pursuant to § 19A-13(b) of the Public Ethics Law, for one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement with any person or business if the public employee significantly participated during the previous three years in regulating the person or business, or in any procurement or other contractual activity concerning a contract with the person or business, unless the Ethics Commission grants a waiver of the restriction.

John Kenney has been employed by Montgomery County Government in his present position as Chief, Aging and Disability Services, DHHS, since being appointed to this "Question A" position in 1995 by then County Executive Douglas Duncan. (Prior to this, Mr. Kenney served as Chief, Adult Services Division, Montgomery County Department of Social Services from 1992-1995; and as Administrator, Adult Assessment Center, a joint program of the Montgomery County Departments of Health and Social Services from 1989-1992).

Mr. Kenney is interested in applying for employment at a local non-profit organization, the Jewish Social Service Agency (JSSA), that operates in the District of Columbia, Northern Virginia, and Montgomery County. Mr. Kenney has "significantly participated" in matters concerning contracts relating to JSSA in the past three years in his position as a Service Area Chief. Therefore, Mr. Kenney would, without a waiver, be prohibited by 19A-13(b) from working with JSSA until one year after terminating County service. Mr. Kenney requests a waiver of the 19A-13(b) prohibition.

Section 19A-8(c) states that the Ethics Commission may grant a waiver of 19A-13(b) if the Commission concludes that failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees or if the proposed employment is not likely to create an actual conflict of interest.

DHHS has several contracts with the Jewish Social Service Agency (JSSA) administered in the Aging and Disability Services division. This includes contracts for: disability employment counseling; case management services for seniors and individuals with disabilities; a Council community grant; escorted transportation services; home delivered meals; and support services

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for people with disabilities to continue to live in the least restrictive environment. DHHS has three other contracts with JSSA that are not administered by the Aging and Disability Services division. The total amount of funds provided to JSSA through Aging and Disability Services in this mix of community grants, open solicitations and one competitively bid contract is just under \$500,000. This amount is less than two percent of the overall funding to contractors (approximately \$26,600,000) Mr. Kenney must approve in his position as Chief, Aging and Disability Services. (There are currently 176 contracts administered within Aging and Disability Services, including 114 in the DHHS base budget totaling \$25,000,000; 62 are community grants totaling an additional \$1,600,000.)

Mr. Kenney's role in the contracting process is to set the strategic direction for his service area, identify programs or pieces of work that should be contracted out, and approve contract actions as being in line with that strategic direction. Mr. Kenney does not serve on the Quality and Selections Committee (QSC) for any contracts and did not serve on the QSC for any JSSA contracts. Mr. Kenney does not get involved in contract negotiations; the Department's Contract Management Team within the Office of the Chief Operating Officer helps contract monitors with negotiations. Mr. Kenney also does not sign contracts; in DHHS, Victoria Buckland has been designated to sign all contracts on behalf of the Director, including those in Aging and Disability Services.

If hired for the position of Chief Operating Officer for JSSA, Mr. Kenney would be responsible, under the direction of the Chief Executive Officer, for the development, administration, and coordination of all existing and new programs activities within the agency. This responsibility entails high-level oversight of the performance of approximately 200 employees and a budget of approximately \$40,000,000. County funding to JSSA administered within Aging and Disability Services (County Executive and Council grants, open solicitations and competitively awarded contracts totaling \$480,051) represents approximately 1.2 percent of JSSA's total operating budget. Mr. Kenney expects his potential prospective employer (JSSA) will continue to seek County Executive and Council grants and bid for funding under open solicitations and competitive RFP processes involving the Aging and Disability Services division within DHHS.

Mr. Kenney's professional experience and academic background is in the area of developing, administering, and overseeing the delivery of services and programs to older adults, individuals with disabilities and family caregivers. In his role as Chief, Aging and Disability Services, MCDHHS, Mr. Kenney has interacted with and approved funding as authorized by the County Executive and County Council in accordance with Office of Procurement and department rules and regulations for virtually every nonprofit and organization that serves older adults, individuals with disabilities and caregivers in Montgomery County (approximately 80 organizations). Were the bar of 19A-13(b) not waived, Mr. Kenney would for one year after leaving County service, be effectively prohibited from working in his professional area of expertise in Montgomery County, where Mr. Kenney and his family have lived for 25 years.

Here, the total amount of funds issued by the County to JSSA that Mr. Kenney has approved in his role as Chief, Aging and Disability Services, MCDHHS, -- while not insignificant -- is a very small percentage of funds Mr. Kenney has approved in his County position. The funds are also a small portion of JSSA's total annual budget.

The Commission finds that if the conditions set forth in this waiver are observed, Mr. Kenney will not have an actual conflict of interest in seeking to obtain outside employment with JSSA and, if successful in obtaining the position, in engaging in the employment with JSSA after terminating service with the County. These conditions include Mr. Kenney:

- (a) Not working while still a public employee on any matter that affects JSSA in a way that is distinct from the effect on the public generally;
- (b) Not working while still a public employee on any matter where JSSA is a party to the matter;
- (c) Not sharing with JSSA, at any time, while employed by the County or otherwise, confidential County information;
- (d) Not ever working on, if ultimately employed at JSSA, any case, contract or other specific matter that Mr. Kenney significantly participated in while an employee of the County;
- (e) Not making any communication or appearance before DHHS on behalf of JSSA in connection with any matter for one year after terminating County service

The Ethics Commission notes the wide reach of the Department across the organizations that serve the aging and disability communities and that the imposition of the bar of 19A-13(b) would mean that Mr. Kenney would effectively be barred from serving in his chosen field inside the County for one year. The County's ability to hire and/or retain qualified public employees (specifically "Question A" political appointees) would be greatly reduced if public sector employment precludes the ability to work in one's professional field of specialization with any/all private entities performing similar services in the County. The Commission recognizes that these circumstances must be weighed against the purposes for which the statutory prohibition is created, which relate to both appearances of and realities of conflicts of interest of government employees whose official actions affect private entities that are potential employers when an employee leaves County service.

In reaching this decision, the Commission has relied upon the facts as presented by the requester.

For the Commission:



Steven Rosen, Chair